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SETTLEMENT AGREEMENT AND RELEASE

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September 8, 2020

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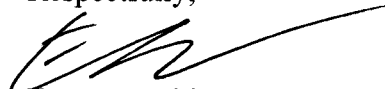
Citizen Suit Coordinator Department of Justice Environment and Natural Resources Division Law and Policy Section P.O. Box 7415 Ben Franklin Station Washington, DC 20044-7415	Administrator U.S. Environmental Protection Agency Mail Code: 1101A 1200 Pennsylvania Avenue, N.W. Washington, DC 20460
Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA 94105	

Re: **Azucena Orozco v. AFC Worldwide Express, Inc. d/b/a R+L Global  
Logistics, et al.**  
**CACD Case No. 2:19-cv-08023-JAK-GJS**

To Whom It May Concern:

We represent Plaintiff Azucena Orozco in the above-referenced action. Please find enclosed a copy of the Settlement Agreement and Release as entered into between the Parties in the above-referenced action to for review pursuant to the Clean Water Act, 33 U.S.C. § 1365(c)(3) and 40 C.F.R. 135.5.

Respectfully,

  
Evan J. Smith

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Settlement Agreement") is made and entered into this 25<sup>th</sup> day of June, 2020, by and among AFC Worldwide Express, Inc. d/b/a R+L Global Logistics ("AFC") and Azucena Orozco ("Orozco") (each, a "Party," and collectively, the "Parties").

### **WITNESSETH**

WHEREAS, AFC operates a logistic facility located at 303 West Artesia Boulevard, Compton, California 90220 (the "Facility");

WHEREAS, Orozco, a citizen of the State of California, in a letter dated June 21, 2019, issued a notice of violations and intent to sue ("NOV") to AFC pursuant to Section 505(b) of the Clean Water Act, 33 U.S.C. § 1365(b), in which Orozco alleged that AFC was in violation of the Clean Water Act for the unlawful operation of a "Light Industry" facility without proper coverage under General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Order No. 2014-0057-DWQ (the "Industrial Stormwater Permit") and the failure to comply with the conditions thereof;

WHEREAS, on September 17, 2019, Orozco filed a Complaint for Declaratory and Injunctive Relief and Civil Penalties ("Complaint") in the United States District Court, Central District of California (Case No. 2:19-cv-08023-JAK-GJS) based on the allegations in the NOV and seeking declaratory and injunctive relief, civil penalties, and attorneys' fees;

WHEREAS, on November 8, 2019, AFC filed a timely Answer to the Complaint denying all substantive allegations and liability because, among other things, the Facility is a logistics facility properly classified by SIC Code 4731 for the Arrangement of Transportation of Freight and Cargo and such facilities are not required to obtain coverage under the Industrial Stormwater Permit or comply with the conditions thereof;

WHEREAS, AFC continues to deny all substantive allegations contained in the NOV and Complaint; and

WHEREAS, the Parties have negotiated in good faith and now desire to fully, completely and finally resolve, terminate and settle any and all claims which were raised or could have been raised in connection with the NOV, the Complaint and stormwater permitting and discharge requirements under the Clean Water Act and the Industrial Stormwater Permit, except for any claim for breach of this Settlement Agreement.

NOW, THEREFORE, in consideration of the agreements herein made and the benefit to be derived from this Settlement Agreement by each Party, as well as other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree to the following:

1. Resolution of Claim. After a comprehensive and diligent analysis, the Parties agree that the Facility is operated solely as a logistics facility properly classified by SIC Code 4731 for the Arrangement of Transportation of Freight and Cargo and, therefore, it is not

required to obtain coverage under the Industrial Stormwater Permit or comply with the conditions thereof.

2. Settlement Terms. In consideration of the release and other agreements set forth herein, AFC agrees to the following:

- a. AFC will remove from its website any references used for marketing purposes to general warehousing in connection with services offered at the Facility;
- b. AFC will implement a written policy that prohibits the storage of "industrial material" or conducting "industrial activities" (as defined below) at the Facility where they are exposed in any material way to rain, snow, snowmelt or runoff and will communicate such policy to its employees at the Facility; and
- c. AFC will permit Orozco's consultant to conduct an inspection of the Facility to confirm that the Facility does not store industrial material or conduct industrial activities at the Facility where they are exposed in any material way to rain, snow, snowmelt or runoff provided that (i) Orozco shall pay all costs incurred by its consultant, (ii) the inspection is scheduled at a date mutually agreed upon after the health and safety concerns associated with the COVID-19 pandemic have ended in the reasonable judgment of both Parties; (iii) AFC's consultant and attorney are permitted to attend and observe all aspects of the inspection; and (iv) the inspection is limited to exterior of the Facility. Orozco's consultant shall issue a written inspection report either (x) confirming that the Facility does not store industrial material or conduct industrial activities at the Facility where they are exposed in any material way to rain, snow, snowmelt or runoff or, (y) if that confirmation cannot be issued in the consultant's opinion, identifying reasonable management practices to reduce or eliminate industrial material storage or industrial activities at the Facility that are exposed in any material way to rain, snow, snowmelt or runoff. If Orozco's consultant identifies reasonable management practices to address industrial material storage or industrial activities under sub-section (y), the Parties shall engage in discussions on whether to implement such management practices or other practices. If the Parties fail to come to agreement on such management practices, this Settlement Agreement shall terminate in its entirety and neither party shall have liability for any aspect of this Settlement Agreement. "Industrial material" or "industrial activities" shall include material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products, and "material handling activities" shall include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product as specified in 40 C.F.R. § 122.26(g).
- d. The Parties hereby agree, acknowledge, and stipulate that AFC shall have no obligation to make any payments under Section 3 of this Settlement Agreement prior to the full satisfaction of all conditions contained in Section 2.c of this Settlement Agreement.

3. Settlement Payment. As further consideration for the release and other agreements set forth herein and provided that the Settlement Agreement is not terminated pursuant to Section 2.c, AFC will pay \$25,000.00 to Brodsky & Smith, LLC for full and final reimbursement of Orozco's attorney's fees, expert fees, and other costs incurred in connection with this matter. AFC shall make the payment within thirty (30) days after both of the following have occurred: (a) AFC's receipt of Orozco's consultant's report confirming that the Facility does not store industrial material or conduct industrial activities at the Facility where they are exposed in any material way to rain, snow, snowmelt or runoff pursuant to Section 2.c(x), or AFC agrees in writing to implement the management practices identified by Orozco's consultant or other practices satisfactory to Orozco pursuant to Section 2.c(y), and (b) Orozco has obtained any necessary approvals of the Settlement Agreement from the U.S. EPA, the U.S. Attorney General or other governmental authority, and the Court.
4. Dismissal of Complaint. Within fourteen (14) days of receipt of AFC's payment pursuant to Section 3, Orozco shall file a dismissal entry approved by AFC's counsel of record dismissing the Complaint with prejudice.
5. Orozco's Release of AFC. In consideration of the mutual promises set forth in this Settlement Agreement, upon the settlement payment pursuant to Section 3, Orozco, on behalf of herself and her successors, assigns, heirs, executors, administrators, beneficiaries, insurers, representatives, agents, and legal counsel, hereby fully release and forever discharge AFC, and its respective past and present predecessors, successors, assigns, representatives, agents, officers, directors, principals, members, shareholders, employees, subsidiaries, parent companies, affiliates, insurers, legal counsel, and all persons or entities acting by, through, under or in concert with AFC, from any and all actual, potential, and contingent claims, actions, causes of action, rights, judgments, debts, contracts, promises, allegations, demands, obligations, duties, suits, expenses (including without limitation legal and expert fees), assessments, fines, penalties, charges, injuries, losses, costs, damages and liabilities and any other compensation of whatever kind and nature or injunctive relief, whether known or unknown, foreseen or unforeseen, whether in contract, equity and/or tort, and whether arising based on federal or state law, resulting from or arising out of the NOV, the Complaint, stormwater permitting and discharge requirements under the Clean Water Act and the Industrial Stormwater Permit or stormwater discharges from the Facility (hereinafter all referred to collectively as "Claims"). Nothing in this settlement agreement, and in particular this release, shall be binding on any third party, including but not limited to the DOJ, EPA, or United States, for any claims that are being released.
6. AFC's Release of Orozco. In consideration of the mutual promises set forth in this Settlement Agreement, upon the settlement payment pursuant to Section 3, AFC, on behalf of itself and its successors, assigns, heirs, executors, administrators, beneficiaries, insurers, representatives, agents, and legal counsel, hereby fully release and forever discharge Orozco, and her assigns, representatives, agents, heirs, legal counsel, from any and all actual, potential, and contingent claims, actions, causes of action, rights, judgments, debts, contracts, promises, allegations, demands, obligations, duties, suits, expenses (including without limitation legal and expert fees), assessments, fines, penalties, charges, injuries, losses, costs, damages and liabilities and any other compensation of whatever kind and

nature or injunctive relief, whether known or unknown, foreseen or unforeseen, whether in contract, equity and/or tort, and whether arising based on federal or state law, resulting from or arising out of the NOV and the Complaint. Nothing in this settlement agreement, and in particular this release, shall be binding on any third party, including but not limited to the DOJ, EPA, or United States, for any claims that are being released.

7. Representations and Warranties. Each Party hereby further warrants, represents, and acknowledges to the other Party that:
  - a. such Party has the right and authority to execute this Settlement Agreement and to receive the consideration given for this Settlement Agreement;
  - b. such Party has not initiated any other case or proceeding involving the subject matter of the Claims released by this Settlement Agreement;
  - c. such Party has not sold, assigned, transferred, conveyed or otherwise disposed of any of the Claims released by this Settlement Agreement;
  - d. the consideration received by such Party for this Settlement Agreement is fair, reasonable, sufficient, just and adequate and constitutes lawful consideration supporting the execution of this Settlement Agreement; and
  - e. such Party is entering this Settlement Agreement based solely and exclusively upon its own analysis of the facts, law, and/or information of which such Party is independently aware and not based upon or in reliance upon any statements and/or representations of any other Party to this Settlement Agreement (except to the extent such statements and/or representations are fully and expressly set forth herein).
8. No Admission of Liability. The Parties expressly agree that this Settlement Agreement and the payment of the sums and actions to be taken as specified herein are done entirely for the purpose of compromise and settlement of disputed claims and do not constitute any admission of liability by AFC by whom liability is expressly denied. AFC is agreeing to implement the actions in Section 2 in the spirit of compromise even though the Parties agree that the Clean Water Act and Industrial Stormwater Permit requirements are not applicable to the Facility.
9. Future Business Operations. The Parties agree, acknowledge, and stipulate that nothing in this Agreement shall be construed to prevent AFC from making any changes to the business operated at the Facility in the sole and unfettered discretion of AFC so long as AFC complies with applicable laws and regulations.
10. Covenant Not to Sue. Orozco covenants that she will not commence or file against AFC any legal action in any court or administrative agency based upon any Claim which has been released pursuant to Section 5 of this Settlement Agreement.
11. Confidentiality. Orozco shall keep and maintain confidential all terms of this Settlement Agreement and the settlement negotiations, and shall not voluntarily disclose to anyone

any of the provisions or terms of this Settlement Agreement, including without limitation, the amount, terms and conditions of any sums payable hereunder, unless required to comply with obligations imposed by applicable laws. Nothing contained in this Section 9 shall prevent Orozco and/or her counsel from seeking or obtaining the consent required under Section 3.b of this Settlement Agreement. In addition nothing contained in this section prevents the disclosure of any settlement terms by the DOJ, EPA, the U.S. Attorney General or other governmental authority, and the Court.

12. Full and Final Settlement. The Parties agree that they have been represented by counsel at all times relevant to this Settlement Agreement, completely read this Settlement Agreement, reviewed its terms and fully understand them. The Parties further agree that they voluntarily accept this Settlement Agreement for purposes of making a full and final compromise of the Claims described in Paragraph 5 of this Settlement Agreement.
13. Attorneys' Fees. Except as expressly set forth herein, the Parties shall bear all of their attorneys' fees and all other costs relating to this action and all related matters referred to in this Settlement Agreement and in negotiating this Settlement Agreement and dismissing the Complaint.
14. Notice. All Notices pursuant to this Settlement Agreement shall be sent to the following:

**For AFC:**

Daniel J. Brake  
Associate General Counsel  
AFC Worldwide Express, Inc.  
600 Gillam Road  
Wilmington, OH 45036  
dbrake@rlcarriers.com

**For Orozco:**

Evan J. Smith  
Brodsky & Smith, LLC  
9595 Wilshire Blvd., Ste. 900  
Beverly Hills, CA 90212  
esmith@brodskysmith.com

**Additionally for AFC:**

Anthony C. White  
Thompson Hine LLP  
41 South High Street, Suite 1700  
Columbus, OH 43215  
Tony.White@ThompsonHine.com

15. Effective Date. This Settlement Agreement shall be effective when the last Party shall have executed, dated, and provided signatures to the other Party ("Effective Date").
16. Authority. The signatories hereto state and affirm that they have the authority to execute this Settlement Agreement and to bind thereby the Party, or successors-in-interest of the Party which they purport to represent.
17. Assignment. This Settlement Agreement may not be assigned by any Party without the prior, written consent of the other Party.

18. Integration. This Settlement Agreement contains the entire agreement between the Parties with regard to the matters set forth herein. Any prior understandings and/or representations that may have been made are fully superseded by this Settlement Agreement.
19. Admissibility. This Settlement Agreement shall not be offered or be admissible as evidence in any action or proceeding except in a proceeding to enforce the terms hereof.
20. Remedies. With respect to any breach of this Settlement Agreement, the Parties acknowledge and agree that specific performance and injunction are the only appropriate remedies for any breach of this Settlement Agreement, and under no circumstances shall monetary damages, civil penalties, fees or any other payments be allowed for any breach of this Settlement Agreement except to satisfy the payments required in Section 3.
21. Severability. In the event any provision of this Settlement Agreement is determined by a court to be invalid, the remainder of this Settlement Agreement shall be valid and enforceable to the fullest extent permitted by law.
22. Successors and Assigns. This Settlement Agreement shall inure to the benefit of, and be binding upon Orozco and her successors, assigns, beneficiaries, indemnitors, heirs, consultants, and counsel and upon AFC and its subsidiaries, affiliates, successors, assigns, and related entities.
23. Counterparts. This Settlement Agreement may be signed in counterparts, each of which shall be deemed an original. Duplicate, facsimile and electronic copies of this Settlement Agreement are deemed by the Parties to be as effective as the original of this Settlement Agreement.
24. Amendment of Settlement Agreement. This Settlement Agreement may only be amended in writing upon the consent of both Parties, which amendment may also be signed in counterparts.
25. Miscellaneous. This Settlement Agreement is the product of fair negotiation, shall be deemed to have been jointly drafted by the Parties, and shall not be construed against any Party. The captions to the sections of this Settlement Agreement are for convenience of reference only and in no way define, limit, or affect the scope or substance of this Settlement Agreement.

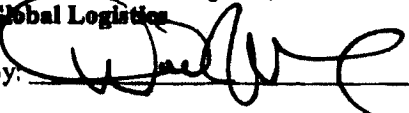
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WHEREFORE, the Parties have executed this Settlement Agreement in counterparts on the dates set forth below their respective signatures.

AFC Worldwide Express, Inc. d/b/a R+L  
Global Logistics

Azucena Orozco

By: 

By: \_\_\_\_\_

Name: Daniel J. Brake

Name: Azucena Orozco  
Azucena Orozco

Title: Associate General Counsel

Dated: June 24, 2020

Dated: July 1, 2020

**BRODSKY & SMITH, LLC**

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BALA CYN WYD, PA 19004

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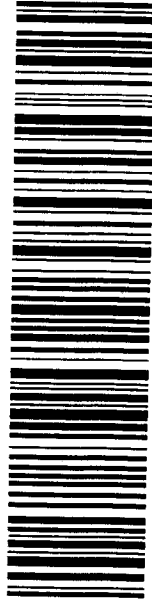
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